

E-Filed 11/26/08

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

OPTIONS NATIONAL FERTILITY REGISTRY,
a California Corporation; and JESSICA and a class
of similarly situated persons,

Plaintiffs,

v.

AMERICAN SOCIETY FOR REPRODUCTIVE
MEDICINE; SOCIETY FOR ASSISTED
REPRODUCTIVE TECHNOLOGY; DOES 1-102
(REGISTERED INFERTILITY PHYSICIANS)
and DOES 103-1500 (FERTILITY CLINICS AND
ASSOCIATED PROFESSIONAL
DEFENDANTS),

Defendants.

Case Number C 07-5238 JF (HRL)

ORDER¹ (1) DENYING MOTION
FOR REFERRAL TO THE FEDERAL
PRO BONO PROJECT;
(2) ADDRESSING REQUEST FOR
ASSISTANCE IN TERMINATING
PLAINTIFF'S COUNSEL OF
RECORD; (3) EXTENDING TIME TO
FILE AMENDED COMPLAINT; AND
(4) CONTINUING CASE
MANAGEMENT CONFERENCE

Plaintiff Options National Fertility Registry ("Options"), a California corporation, filed this action on October 12, 2007, purporting to represent a class of human egg donors who object to an alleged industry practice of "egg sharing." The complaint alleged claims for breach of

¹ This disposition is not designated for publication in the official reports.

1 contract, tortious interference with a contractual relationship, fraud, and conversion. On
2 October 20, 2008, the Court dismissed the complaint for lack of subject matter jurisdiction. The
3 Court noted that the complaint failed to allege violation of any federal statutory or constitutional
4 provision, but rather alleged four state law claims. The Court noted further that diversity
5 jurisdiction did not lie because both Options and Defendant American Society for Reproductive
6 Medicine are California corporations. The Court concluded that amendment likely would be
7 futile, but granted Options one opportunity to attempt to allege federal subject matter
8 jurisdiction. The amended complaint is to be filed on or before December 1, 2008.

9 On November 13, 2008, an individual named Teri Royal, purporting to act for Options,
10 submitted to chambers via facsimile a motion requesting referral to the Federal Pro Bono Project
11 and seeking assistance in terminating Options' counsel of record, Stanley Hilton. The motion
12 asserts that Mr. Hilton has failed to communicate with Options, and in particular that Mr. Hilton
13 has not informed Options of the motion to dismiss, the order of dismissal, or the December 1
14 deadline for amendment. The Clerk of the Court is directed to file this document as of the date
15 it was submitted, November 13, 2008.

16 Because it appears clear on the face of the complaint that this Court lacks subject matter
17 jurisdiction over Options' claims, the Court will deny the motion for referral to the Federal Pro
18 Bono Project. This ruling is not intended as a comment on the merits of Options' claims, but
19 rather arises from the Court's conclusion that those claims properly should be asserted in state
20 court rather than federal court.

21 With respect to the request for assistance in terminating Mr. Hilton as counsel of record,
22 the Court cannot involve itself in the relationship between a party and its counsel. However, if
23 Mr. Hilton in fact has abandoned Options as described in Ms. Royal's submission, the Court
24 urges Ms. Royal or another person authorized to act for Options to contact the California State
25 Bar to report Mr. Hilton's conduct.

26 Finally, because of Ms. Royal's representations regarding Mr. Hilton's abandonment and
27 Options' lack of knowledge regarding the December 1 deadline for amendment of the
28 complaint, the Court will extend the deadline for amendment to January 16, 2009. Options is

1 advised that because it is a corporation, it cannot proceed in this action without counsel.

2 Accordingly, if Options intends to pursue its claims in this Court, it must obtain counsel to act
3 for it.

4 The Case Management Conference set for December 5, 2008 is continued to January 16,
5 2008.

6 IT IS SO ORDERED.

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10 DATED: 11/26/08

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13 JEREMY FOGEL
United States District Judge

1 This Order has been served upon the following persons:

2 Catherine Mi Lee c.lee@mpglaw.com

3 Stanley G. Hilton FROG727@AOL.COM, froggg333@comcast.net,
4 mscarver@aol.com, STAVROS3589@AOL.COM

5 Teri Royal @ fax number 714-799-1314²

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27 ² Although Ms. Royal is not a party to the action, the Court agreed to provide her with a
28 courtesy copy of the instant order in light of her representations regarding Mr. Hilton's failure to
communicate with her.